In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-310

STANDARD FORGE AND AXLE COMPANY, INC., PETITIONER

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION IN OPPOSITION

Petitioner contends that the court of appeals erred in holding that the district court had abused its discretion in ordering the Equal Employment Opportunity Commission to make a further more definite statement concerning procedural prerequisites to its right to sue at this time.

1. In May 1973, the Commission filed this action against petitioner in the United States District Court for the Middle District of Alabama seeking relief based on asserted violations of Title VII of the Civil Rights Act of 1964, 78 Stat. 253, as amended, 42 U.S.C. (Supp. II) 2000e, *et seq.* In its complaint the Commission invoked various jurisdictional statutes[1] and alleged that

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[1]28 U.S.C. 451, 1343, and 1345.

the action was expressly authorized by Section 706(f) of the Act.[2] The complaint alleged that petitioner was engaged in an industry affecting commerce, that it employed more than 25 persons,[3] and that "[a]ll conditions precedent to the institution of this lawsuit have been fulfilled" (Pet. App. 4-A).[4] The complaint further contained allegations as to violations and a prayer for relief.

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[2]Section 706(f) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. (Supp. II) 2000e-5(f), provides in part:

> (1) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) or (d) of this section, the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission may bring a civil action against any respondent not a government, governmental agency, or political subdivision named in the charge. * * *
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> (3) Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under this subchapter. * * *

[3]An employer must be engaged in an industry affecting commerce and have 25 or more employees (15 after March 1973) to be subject to the Act. 42 U.S.C. (Supp. II) 2000e.

[4]In addition to this general allegation the complaint alleged, with reference to the preconditions for suit specified in Section 706(f), that (Pet. App. 3-A):

> Charges have been filed with the Equal Employment Opportunity Commission, by a former Commissioner (Alexander) and by a person claiming to be aggrieved, more than thirty (30) days prior to the institution of this suit alleging a violation of Title VII by Standard Forge.

Petitioner filed alternative motions under Rules 12 and 56, Fed. R. Civ. P., seeking dismissal of the complaint, a more definite statement, or summary judgment. The district court denied the motions to dismiss and for summary judgment but granted the motion for a more definite statement under Rule 12(e), Fed. R. Civ. P. The Commission proposed to amend its complaint to comply with the district court's order by including several general allegations about the administrative process.[5]

The district court, however, ordered the Commission to provide by a further more definite statement extensive details regarding the administrative process preceding the Commission's decision to sue (Pet. App. 14-A to *16-A*).[6] The Commission declined to comply with the order and the district court dismissed the case (Pet. App. 17-A to 21-A).

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[5]The amendment stated (Pet. App. 5-A):

> The Commission, after investigating and finding reasonable cause to believe the truth of the charges, has been unable, through informal methods of conference, conciliation and persuasion, to eliminate the unlawful practices or to secure a conciliation agreement acceptable to it.

[6]The order required the Commission to allege (Pet. App. 6-A to 7-A):

> In regard to the individual charge (a) the date of the alleged unlawful employment practice and the date the charge was filed; (b) that the charge was properly sworn; (c) that proper notice was issued to Standard Forge & Axle Company, Inc., and the date of said notice; (d) that an adequate investigation was made, the name of said investigator; and the dates the said investigation started and ended; (e) that a legitimate reasonable cause determination was made and a brief statement of the evidence alleged to constitute reasonable cause; (f) that a conciliation took place between the parties, specifying the name of the conciliator(s), the date or dates of concilia-

The court of appeals reversed and remanded, holding that the district court had abused its discretion "by granting the motion for a more definite statement and by formulating highly detailed inquiries which were inappropriate at that stage of the action" (Pet. App. 9-A; 496 F. 2d 1392, 1394).

2. The petition presents only a question of proper pleading.[7] As the district court recognized in initially denying the motion to dismiss for lack of jurisdiction, the complaint alleged sufficient facts to establish the jurisdiction of the court to hear the case. And, as the court of

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tion and that the Plaintiff made a good faith reasonable effort; and (g) the date the charge was filed and the date the suit was filed.

In regard to the Commissioner's charge (a) the basis of the Commissioner's reasonable cause to believe the Defendant was in violation of the applicable act and the facts upon which the charge was premised; (b) the date the charge was filed and the bases for alleging the alleged offense to be continuing; (c) that proper notice was issued to Defendant and the date of said issuance; (d) that a proper investigation was made, the name of said investigator, the place and the manner of the investigation, and the dates the said investigation started and ended; (e) that a legitimate reasonable cause determination was made and the date and basis of the determination; (f) that a conciliation took place between the parties, specifying the name of the conciliator(s), the date or dates of conciliation and that the Plaintiff made a good faith reasonable effort, and (g) the date the charge was filed and the date the suit was filed.

[7]Much of the controversy below centered on whether Section 706(b) of Title VII (see Pet. 3-4) prescribes jurisdictional facts or conditions precedent to suit or whether, as the Commission urged, it merely delineates the procedural framework for the Commission's informal resolution of unlawful employment practices. The court of appeals found it unnecessary to resolve this issue (Pet. App. 8-A), and it is not before the Court at this time.

appeals noted, the "complaint specified the statutes which conferred jurisdiction on the court, and the factual allegations are not attacked as being immaterial or insubstantial. *Bell* v. *Hood,* 1946, 327 U.S. 678 * * * " (Pet. App. 9-A). The requirement of Rule 8(a)(1), Fed. R. Civ. P., of "a short and plain statement of the [jurisdictional] grounds" of the action had thus been met.

As the court of appeals noted, the district court had viewed the Commission's pleading as deficient in that it contained " 'conclusory allegations of matters such as jurisdictional conditions precedent' " (Pet. App. 6-A) and had ruled "that the EEOC's failure to state 'what facts constitute the conditions precedent' made the complaint vague and ambiguous and thus subject to a motion for a more definite statement" (*ibid.*). The court of appeals properly rejected both the district court's premise and its conclusion since they were based on a misconception of how conditions precedent, or jurisdictional prerequisites, are to be pleaded. Under Rule 9(c), Fed. R. Civ. P., it is entirely appropriate to plead the performance or occurrence of such matters "generally".[8] The district court's order would have required allegations of evidentiary detail available through discovery, contrary to the basic principles of notice pleading underlying the Federal Rules of Civil Procedure.

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[8]See also Rule 9(d), Fed. R. Civ. P., providing that "[i]n pleading an * * * official act it is sufficient to aver that * * * the act [was] done in compliance with law." By contrast, as the court of appeals correctly noted (Pet. App. 10-A), to join issue on the question whether preconditions to suit have been performed, the defendant must deny their performance "specifically and with particularity." Fed. R. Civ. P. 9(c).

The decision of the court of appeals in this case is in accord with the ruling of the Ninth Circuit in a similar case that the matters in issue here may be alleged generally pursuant to Rule 9(c). *Equal Employment Opportunity Commission* v. *Wah Chang Albany Corp.*, 499 F.2d 187, 189-190 (C.A. 9). It does not conflict with the decision of any other court of appeals and presents no issue warranting review by this Court.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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